

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

246

RSA-575-2022 (O&M)
Date of decision: 15.03.2024

STATE OF HARYANA AND ANOTHERAppellants

VERSUS

BALDEV KUMARRespondents

CORAM : HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: - Mr. Vivek Chauhan, Addl. A.G. Haryana.

Mr. B. S. Mittal, Advocate
for the respondent.

VINOD S. BHARDWAJ, J. (Oral)

1. Defendant-State is in appeal against the judgment and decree dated 31.07.2018 passed by the Civil Judge (Junior Division), Sirsa and the subsequent dismissal of the appeal by the District Judge, Sirsa bearing Civil Appeal No. 169 of 2019 vide judgment dated 12.01.2021.
2. Briefly summarized the facts of the present case are that the respondent-plaintiff had filed the Civil Suit for the declaration to the effect that he is entitled to get his pay fixed in the pay scale of Rs. 4000-6000 w.e.f. 01.05.1990 and is further entitled to get his pay fixed at Rs. 5000/- at par with Bhagat Singh Electrician, junior to the plaintiff and in the same

cadre, department and also performing the same nature of duties. It was stated that a junior employee cannot be granted pay higher than the senior and that the stepping up of the pay scale is not being done causing prejudice to the plaintiff. It was further averred that the respondent-plaintiff was initially appointed as Helper on 06.02.1987 through Employment Exchange, Sirsa in the pay scale of Rs. 750-900 and thereafter was promoted as Assistant Electrician on 05.04.1989 in the pay scale of Rs. 950-1400. He was further promoted as Electrician on 19.11.1991 in the pay scale of 1200-2040. A colleague Bhagat Singh, Electrician was initially appointed as Helper on 27.04.1987 in the pay scale of Rs. 750-940 by the appellants-defendants and was thereafter promoted as a Assistant Electrician on 05.04.1989 in the pay scale of 950-1400 and further promoted as a Electrician on 05.07.1999 in the pay scale of 4000-6000. It was hence submitted that the plaintiff had always been senior to Shri Bhagat Singh in the same cadre and department and they had been initially inducted at the same level and have earned promotions thereafter. Thus, notwithstanding that the respondent-plaintiff was discharging the same duties and responsibilities as were being discharged by Bhagat Singh, the pay scale of the respondent-plaintiff was lower.

3. It was also averred that prior to 1995, there were no service rules for Haryana Roadways Employees and the Rules of 1995 i.e. Haryana Transport Department (Group-C), Haryana Roadways Service Rules were notified. It was also averred that the co-employee Bhagat Singh was an under Metric and who did not even possess an ITI Diploma but had been placed in the pay scale of 4000-6000 w.e.f. 01.05.1990 and he had been

awarded first ACP scale of Rs. 5000-7850 and the basic pay was fixed at Rs. 5000. He was given benefit of second ACP on 01.06.2010 in the pay scale of 5200-20200+ Rs. 3300 as grade pay and the pay was fixed at Rs. 12780+ grade pay as on 01.06.2010. Benefit of third ACP was granted to him in the pay scale of Rs. 15360/- + Rs. 4000 Grade Pay. The said benefits had not been given to the respondent-plaintiff despite being similarly situated. Hence, the above suit was filed.

4. On notice, the appellant State entered appearance and raised various objections with respect to the maintainability of the claim. It was however not disputed that the respondent-plaintiff was senior to Bhagat Singh Electrician. It was however stated that the benefit of the higher pay scale was granted to Bhagat Singh as per the orders passed by the High Court in CWP-14407 of 2012 and that the Government of Haryana notified the Haryana (Abolition of Distinction of pay scale between technical and non-technical posts) ordinance and the Notification dated 11.03.2014 as per which the employees who were getting the technical pay scale had been withdrawn. It was further pointed out that the employees who were getting the technical pay scale prior to 10.12.2013 would continue to get technical pay scale while the persons who had not been given the said benefits could not be given the said pay equal to the other employees.

5. Upon consideration of the pleadings, the following issues were framed:-

1. Whether the plaintiff is entitled to the relief declaration as prayed for? OPP

2. Whether the suit of plaintiff is not maintainable? OPD

3. Whether the plaintiff has no cause of action and locus standi to file the present suit? OPP

4. Whether this court has no jurisdiction to try and entertain the present suit? OPD

5. Whether the plaintiff is estopped by his own act and conduct from the filling the present suit? OPD

6. Whether the plaintiff has concealed true and material facts from this court? OPD

7. Relief.

6. Parties led their respective evidence and upon consideration of the contention and evidence led by the respective parties, the Civil Court came to a conclusion that the respondent-plaintiff is senior in the same cadre and discharging the same function and responsibilities and that there is no valid foundation for justifying the difference between their salaries and no reasons have been shown by the Appellant-State on the basis whereof the benefit of stepping up of said pay scale was denied to the respondent-plaintiff. It was claimed that the respondent-plaintiff was not claiming the up gradation of salary on the ground of technical/non-technical qualification but on the ground of parity of pay scale with his junior. The Act of 2014 relied upon by the Appellant-State debarred avoiding of a higher pay for technical qualification and its purpose was held to not frustrate the right of a senior employee to seek step up of his pay at par with the salary of the junior employee. In view of the same, it was held that the respondent-plaintiff is entitled to the benefit of declaration claimed by him and a mandatory injunction was issued to the appellant-defendant-State to grant him step up of a pay scale of his salary at par with the junior who was earlier drawing

higher salary than him. The arrears were directed to be paid alongwith interest @ 8% per annum.

7. Aggrieved thereof, an appeal was preferred by the State of Haryana before the District judge, Sirsa. It was also noticed that the said appeal was filed after a delay of 259 days. Finding that no satisfactory explanation had been given by the appellant-State of Haryana for a delay of more than 09 months in filing of the appeal and learned District Judge, Sirsa relied the judgment of the Hon'ble Supreme Court in the matter of "**Chief Post Master General and others versus Living Media India Ltd. and another**" reported as (2012) 16 GSTR 477, while dismissing the appeal for condonation of delay. Aggrieve thereof, the present appeal has been filed.

8. Learned counsel appearing on behalf of the State contends that the District Judge ought to have examined the case on merits and that the delay had wrongly not been condoned. Sufficient reasons for delay in filing of the appeal had been given by the Appellant State of Haryana and it was pointed out that after the decree had been passed by the Civil judge (Junior Division), Sirsa, the office of District Attorney was contacted and a legal opinion was sought with respect to the case being fit for filing of appeal or not. After obtaining the said legal opinion, the appeal was filed but a delay of 259 days had occurred in the meanwhile. It is contended that the said delay was not on account of any lapse on the part of the State but was on account of delay in submission of the opinion by the District Attorney.

9. Counsel for the respondent-plaintiff on the other hand contends that the remanding of the case at this stage with District Judge for fresh adjudication would be a mere empty formality since the Appellant State of

Haryana has already implemented the decree and the admissible benefits have already been released in favour of the respondent-plaintiff. He further contends that even otherwise, a similar controversy in relation to the Haryana Roadways Sirsa, pertaining to a store boy Partap Singh was also decreed by the Courts below and benefit of stepping up had been given. The State of Haryana had preferred appeal bearing RSA No. 1457 of 2021 against the decree granted by the Courts for declaration and mandatory injunction to the State granting a stepping up of pay. The said Regular Second Appeal was dismissed by the High Court vide judgment dated 20.04.2022 and the concurrent findings recorded by the Subordinate Courts were upheld. Against the said judgment dated 20.04.2022, the State of Haryana had preferred Special Leave Petition bearing Diary No. 25095 of 2022 which was also dismissed by the Hon'ble Supreme Court vide order dated 09.09.2022. It is contended that the case of the respondent-plaintiff would even otherwise be covered by the said judgment rendered by this Court and as upheld by the Supreme Court.

10. Counsel appearing for the State is not in a position to dispute that the judgment and decree had already been complied with and similar benefit to other employee has already been tested by it uptill the Hon'ble Supreme Court.

11. Having heard, learned counsel appearing on behalf of the respective parties and taking into consideration the judgments rendered by the Court below as also the evidence adduced on record, the following facts remain undisputed :-

- i) That the respondent-plaintiff is senior to Bhagat Singh, Electrician
 - ii) That the respondent-plaintiff and his co-employee Bhagat Singh Electrician were performing the same duties and responsibilities in the same Department.
 - iii) That the salary paid/released to the co-employee, who was junior to the respondent-plaintiff was higher than the pay scale being released in favour of the respondent-plaintiff.
 - iv) That the sole reason given by the appellant-defendant State of Haryana for fixation of a low salary is that post coming into effect of the Act of 2014, the benefit of a higher pay scale could not given to the respondent-plaintiff.
12. I find that the above said explanation is devoid of merit. The intent of the Act of 2014 was against grant of benefit to a person who claimed a higher pay scale and it would not operate as a prohibition against a person who is claiming stepping up of his pay at par with the salary being given to his juniors. The said provision could not have been read to the prejudice of an employee who is otherwise entitled to the benefits that become payable to him. Further, it is also noticed that the decree in question has already been satisfied by the appellant-defendant State of Haryana.
13. It is also noticed that under similar circumstances and in relation to other employee working with the Haryana Roadways, Sirsa namely Partap Singh, the said benefit of stepping up has already upheld in the judgment dated 20.04.2022 passed in RSA No.1457 of 2021 passed by this Court, which such judgment has already been affirmed by the Hon'ble

Supreme Court. Hence, considering from either of the said perspectives, remanding the case, merely for a technical compliance and for affording an opportunity of hearing and advancing argument on merit would only delay the finalization of the proceedings and would not serve any purpose. Moreover, this Court has also considered the merits of the claim raised by the State while hearing the present appeal and has also examined the judgment in RSA No. 1457 of 2021 passed by this Court.

14. Counsel for the State could not point out any illegality in judgment and decree dated 31.07.2018 passed by the Civil Judge (Junior Division), Sirsa or as to how the case of respondent-plaintiff would not be covered by the judgment in RSA-1457 of 2021. He also could not point out any illegality or misreading or mis-interpretation of evidence by the Court.

15. In the said circumstances, remanding the case, solely for a technical compliance by the District Judge, would serve no real purpose and would cause travesty of justice.

16. Finding no merit, the present appeal is dismissed. The judgments passed by the Courts is affirmed.

17. All the pending miscellaneous application(s), if any, are also disposed of.

(VINOD S. BHARDWAJ)
JUDGE

MARCH 15 , 2024
Vishal Sharma

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No